No. 93-31

In The

Supreme Court of the United States

October Term, 1993

DON N. WEST,

Petitioner,

vs.

BUFFALO CENTER-RAKE SCHOOL DISTRICT,
BY ITS BOARD OF DIRECTORS,

Respondent.

On Petition For Writ of Certiorari
To The Iowa Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the administrative and judicial proceedings terminating petitioner's employment contract afforded him due process.

2. Whether the proceedings terminating petitioner's employment afforded him a fair hearing before an impartial decision maker.

STATEMENT OF THE CASE

In compliance with Supreme Court Rule 15 Respondent-Board addresses perceived misstatements of the record by Petitioner West. He does not mention that he failed to provide the Iowa appellate court system with the required references to the record in support of the assertions set forth in his Statement of the Case. (Pet. App. 8-13). As a consequence, the Iowa Court of Appeals adopted the Board's statement of the facts. Accordingly, a much different picture of the events results.

West had been Superintendent for ten years at Buffalo Center-Rake when he and the board began to have disagreements over his management style. Additional problems also surfaced. West borrowed money for personal use from school funds. He attempted to obtain unauthorized double payment on part of his compensation package. He personally cashed a school check at an out of town bank (Pet. App. 1-3).

Contrary to West's allegation that "a majority of the Board met secretly several times" (Pet. 11), the Board met only twice in closed session to discuss the deteriorating relationship with West (Pet. App. 3). Closed sessions to discuss personnel matters are permitted under Iowa Code Section 21.6 (1989). At the second meeting, the Board president suggested to West that he resign (Pet. App. 3). West refused. The Board evaluated West on January 3, 1990, and January 10, 1990, at which time West was asked to respond to the Board's concerns (Pet. App. 64). West declined to answer any questions about his conduct (Pet. App. 64, 66-67). The Board determined West's performance was unsatisfactory and termination proceedings

commenced (Pet. App. 3). A six day hearing was held before an independent administrative law judge, appointed by the Iowa State Board of Educational Examiners, who found that grounds to terminate West existed (Pet. App. 4). The Board reviewed the administrative law judge's decision, adopted it and terminated West (Pet. App. 4, 22).

West appealed to Iowa district court. The district court held that under either a "just cause" or "reasonable foundation" standard, grounds to terminate West existed (Pet. App. 24-27). The district court found that the board was "fair and impartial" in connection with the termination proceedings (Pet. App. 22). West appealed to the Iowa Supreme Court. The case was assigned to the Iowa Court of Appeals, which affirmed the district court on February 2, 1993 (Pet. App. 1). The Iowa Supreme Court denied further review on April 2, 1993 (Pet. 31).

REASONS WHY PETITION SHOULD BE DENIED

I. PETITIONER'S CHALLENGE TO THE CONSTITUTIONALITY OF IOWA CODE SECTION 279.24 (1989) WAS NOT PRESERVED FOR REVIEW AND IS WITHOUT MERIT.

Petitioner asserts Iowa Code Section 279.24 (1989) is unconstitutionally vague under the due process clause. Petitioner failed to make this claim in any of the fifty-four pages of his state court appellate brief, however. If he had, the Iowa Supreme Court, rather than assigning the case to the Iowa Court of Appeals, would have retained the case pursuant to R. App. Pro. 401(b) and notified the

Iowa Attorney General in order to permit the state to participate pursuant to Iowa R. App. Pro. 460. The challenge to the constitutionality of Iowa Code Section 279.24 (1989) was not coherently raised before the Iowa Court of Appeals and is therefore waived. *Beck v. Washington*, 369 U.S. 541, 553 (1962).

West's argument that the lower courts did not define the standard for termination is without merit. Iowa Code Section 279.25 (1989) provides that all administrators, including superintendents, may be discharged only for "just cause". In contrast the decision to merely non-renew a superintendent's employment contract for the next year need only be based upon a "reasonable foundation". Iowa Code Section 279.24 (1989); *Wedergren v. Board of Directors*, 307 N.W.2d 12, 16 (Iowa 1981). The issue of which standard was applied to West, if there is an issue, is irrelevant here. The Iowa courts found that grounds existed to terminate West under either of the two standards and gave West the benefit of the higher "just cause" standard. Under either, his termination was justified.

II. THE DECISION BELOW GAVE FULL CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

West has received the full measure of due process, including a six-day hearing before an independent administrative law judge whom West helped to select. The case involves an extensive record. The issues are exceedingly fact-bound. West wants this Court to perform a sixth review of a lengthy record to see if it can find what five previous tribunals have been unable to find,

proof of unacceptable bias against petitioner. This court has ruled that such canvassing is not a task to be served by a grant of certiorari: "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925).

III. THE IOWA COURT OF APPEALS DECISION RESTS ON STATE GROUNDS.

West's argument that he was denied the opportunity to present evidence critical to his defense is without merit. West submitted the disputed evidence to the court essentially in the form of an offer of proof, but the court deemed the evidence irrelevant (Pet. App. 16, 70).

A review by this court would involve questions of evidence under familiar legal rules. Weighing the relevancy of evidence is not a task the Supreme Court of the United States customarily performs. Whether the evidence is relevant is a matter of peculiar Iowa state law. This court will deny certiorari when a state court judgment rests on state grounds. *Minnesota v. National Tea Co.*, 309 U.S. 551, 554 (1940).

The Iowa Court of Appeals decision rests on state grounds for additional reasons. West violated state rules of appellate procedure (Pet. App. 8-13). Petitioner's counsel declined to furnish the Iowa appellate courts with a proper appendix to enable the state courts to conduct its review (Pet. App. 8-13). The court "strongly admonished" West's counsel and found "his flagrant disregard of the appellate rules to be absolutely unacceptable" (Pet. App. 12). The Iowa Court of Appeals stated "we will consider

absolutely no portion of West's 'substituted appellant's brief and appendix.' Pages 24 through 209 of the appendix are stricken, and we will not consider any references to those pages which are cited in the first fifty pages of West's brief" (Pet. App. 10). Because of West's violation of the rules, a substantial portion of the same record that this Court is now being asked to review was disregarded by the state appellate court. The issues raised in pages 139 – 280 of West's appendix to his Petition For Certiorari were not properly presented to the Iowa appellate courts. A waiver will be implied when a party fails to obey state rules of procedure. *Parker v. Illinois*, 333 U.S. 571 (1948).

IV. THERE ARE NO CONTROLLING ISSUES OF FEDERAL LAW.

West was provided with all of the elements of due process: notice of the charges, an opportunity to respond and a fair hearing before an independent administrative law judge. *Board of Regents v. Roth*, 408 U.S. 564, 570, n.7 (1972). Iowa Code Section 279.24 on its face and as applied to petitioner fully complied with federal due process. *Swab v. Cedar Rapids Community School District*, 494 F.2d 353 (8th Cir. 1974) (Iowa termination procedures for teachers comports with due process).

West claims that to require him to pay one-half of the costs of the administrative law judge hearing that he himself requested is unjust. This argument is without merit. West was the losing party at the administrative hearing and before four subsequent tribunals. Requiring him to pay part of the hearing costs is not unfair. West does not claim that being assessed a portion of the

hearing costs prevented him from exercising his right to challenge his termination. Moreover, West cites no portion of the record establishing the amount of any hearing costs actually taxed against him. The issue of whether petitioner is required to pay one-half of the hearing costs is not sufficiently important to warrant review by the United States Supreme Court.

CONCLUSION

For these reasons, the Petition should be denied.

Respectfully submitted,

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